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6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9

10 PATRICIA NASH,

11 Plaintiff,

12 vs.

13 BAY AREA RAPID TRANSIT  
DISTRICT, DOES 1-40,

14 Defendants.  
15

)  
) **No. C 05 5307 VRW**  
)  
)

) **PLAINTIFF'S NOTIFICATION**  
) **THAT CONSIDERATION FOR THE**  
) **SETTLEMENT HAS NOT BEEN**  
) **RECEIVED**  
)  
)  
)

16 The parties reached an oral settlement on February 19, 2008  
17 at a settlement conference with Magistrate Judge Brazil, but the  
18 agreement was not reduced to writing or spoken onto the record  
19 at that time. In the meantime Mark Hazelwood, attorney for  
20 defendant BARTD, and Richard Kashdan, attorney for Plaintiff,  
21 have been working on a draft of a formal Release and Settlement  
22 Agreement. When complete and executed, the BARTD board must  
23 approve it at one of its monthly meetings.

24 Judge Walker issued an Order of Dismissal on February 22,  
25 2008, which stated in part:

26 "... if any party hereto shall certify to this court,  
27 within 90 days, with proof of service of a copy  
28

1           thereof, that the agreed consideration of said  
2           settlement has not been delivered over, the foregoing  
3           order shall stand vacated and this cause shall  
          forthwith be restored to the calendar to be set for  
          trial."

4           This document is plaintiff's certification to the court  
5           that consideration for the settlement has not been delivered.  
6           It is clear at this point that even the monetary portion of the  
7           settlement will not be paid within the 90 days because the  
8           Settlement Agreement has not been finalized and submitted to the  
9           BARTD board. The Settlement Agreement will also contain a  
10          section wherein BARTD agrees to install a between-car barrier  
11          system on its entire fleet of cars. The detailed design of this  
12          system should be complete by July 1, 2009, and the system should  
13          be installed on every BART car over an additional four-year  
14          period. Plaintiff and BARTD agreed that the court should retain  
15          some type of supervision over the settlement during that period  
16          so that BARTD can ask the court for a modification to the  
17          schedule if it runs into certain types of hardship, and that  
18          plaintiff can ask the court for an order if BARTD falls behind  
19          schedule without excuse.

20          The Order of Dismissal should be vacated so that the court  
21          can retain such jurisdiction. But the case should not be set  
22          for trial at this time because the parties continue to act in  
23          good faith and believe that the monetary and injunctive  
24          consideration will eventually be completed. The parties would  
25          prefer that Judge Walker or Magistrate Judge Brazil or both be  
26          designated as the judge(s) who would handle any disputes, rather  
27          than some other department that is not familiar with the case.

1 We request advice from the court on how to word this section of  
2 the Settlement Agreement, and perhaps a conference call with  
3 either or both judges would be helpful.

4  
5 DATED: May 20, 2008

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7 By: /s/ Richard Kashdan  
8 RICHARD L. KASHDAN  
9 Attorney for Plaintiff  
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**PROOF OF SERVICE BY MAIL**

I am over the age of 18 years, a resident of and employed in San Francisco, and not a party to this action. On this date I mailed a copy of the attached document with proper postage attached to:

Mark F. Hazelwood  
Laura S. Flynn  
Low, Ball & Lynch  
505 Montgomery St. 7<sup>th</sup> flr  
San Francisco, CA 94111-2584

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 20, 2008

/s/ Richard Kashdan  
Richard Kashdan